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17 Attorneys for Defendant
18 JEANS CITY USA, INC.

19 UNITED STATES DISTRICT COURT

20 FOR THE NORTHERN DISTRICT OF CALIFORNIA

21 LEVI STRAUSS & CO.,

Case No. C 08-01639 WHA

22 Plaintiff,

**JOINT CASE MANAGEMENT
STATEMENT AND [PROPOSED]
ORDER**

23 v.

24 JEANS CITY USA, INC.,

**CMC DATE: July 24, 2008
CMC TIME: 2:30 p.m.**

25 Defendant.

26
27 Plaintiff Levi Strauss & Co. ("LS&CO.") and defendant Jeans City USA, Inc. ("Jeans
28 City") jointly submit this Case Management Statement and Proposed Order.

1 **1. Jurisdiction and Service.**

2 LS&CO.'s first, second and third claims arise under the Lanham Act. This Court has
 3 subject matter jurisdiction over those claims pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1338(b)
 4 and 15 U.S.C. §1121, and supplemental jurisdiction over LS&CO.'s state law claims pursuant to
 5 28 U.S.C. §1367. No issue exists as to personal jurisdiction or venue, and no parties remain to
 6 be served.

7 **2. Facts and Bases for Claims and Defenses.**

8 Plaintiff's Claims:

9 LS&CO. is a Delaware corporation which has its principal place of business in San
 10 Francisco, California. LS&CO. is the sole owner of the Arcuate Stitching Design Trademark
 11 ("Arcuate Trademark"), which LS&CO. has used continuously in interstate commerce since
 12 1873 and which is the oldest apparel trademark still in use in the United States. The Arcuate
 13 Trademark is federally registered and incontestable. Examples of LS&CO.'s use of the Arcuate
 14 Trademark on jeans are attached as Exhibit A to the Complaint, and LS&CO.'s federal and
 15 California registrations for the Arcuate Trademark are attached to the Complaint as Exhibit B.
 16 LS&CO. is also the sole owner of the Tab Device Trademark ("Tab trademark"), which
 17 LS&CO. has used continuously in interstate commerce since 1936. The Tab Trademark is
 18 federally registered and is incontestable. Examples of LS&CO.'s use of the Tab Trademark on
 19 jeans are attached to Exhibit C to the Complaint and LS&CO.'s federal and California
 20 registrations for the Tab Trademark are attached to the Complaint as Exhibit D.

21 Jeans City USA, Inc. is a Florida corporation with its principal place of business at 8030
 22 W. 26th Ave., Hialeah, Florida 33016. Jeans City manufactures and sells a line of clothing,
 23 including jeans. These jeans are sold on at least the Jeans City website (www.jeanscityusa.com)
 24 and in various states throughout the United States. Jeans City has distributed jeans that display
 25 stitching and/or tab designs that LS&CO. believes are confusingly similar to LS&CO.'s Arcuate
 26 and Tab Trademarks and violate LS&CO.'s rights in its marks. LS&CO.'s complaint states
 27 claims against Jeans City for trademark infringement, dilution and unfair competition under
 28 federal and California law.

1 Defendant's Defenses:

2 Jeans City denies all allegations in LS&CO.'s Complaint. Jeans City does not have the
3 resources to take-on LS&CO.'s apparel empire. In Jeans City's view, LS&CO. has already
4 obtained a fair remedy—Jeans City has permanently ceased manufacturing and selling any
5 product bearing the tabs and/or stitching designs at issue in this litigation, and as a remedial
6 measure, did so promptly after being served with LS&CO.'s Complaint. It is Jeans City's
7 position that prior to being served with LS&CO.'s lawsuit, it never received notice from
8 LS&CO. indicating that it thought Jeans City was infringing LS&CO.'s trademarks. If it had,
9 Jeans City believes that this lawsuit could have been avoided. Without admitting any liability,
10 Jeans City wants this litigation to end, and believes that an equitable outcome has been
11 achieved. In the event that LS&CO. proceeds to litigate this case, Jeans City will defend on the
12 merits, and believes that its affirmative defenses will provide an independent basis to dismiss
13 LS&CO.'s Complaint.

14 **3. Issues in Dispute.**

15 The issues (both factual and legal) set forth below are not meant to be final or
16 exhaustive, and the parties reserve their rights to reformulate these issues or include other
17 appropriate issues as they develop or become known to the parties through the course of
18 discovery and investigation. Furthermore, the characterization of an issue as "factual" or "legal"
19 is not necessarily a concession that it is not the other or both.

20 Factual Issues:

21 a. Whether Jeans City's manufacture, distribution, and/or sale of products
22 bearing the stitching and/or tab designs at issue is likely to cause confusion, mistake or
23 deception among consumers and potential consumers.

24 b. Whether Jeans City's manufacture, distribution, and/or sale of products
25 bearing the stitching and/or tab designs at issue dilutes or is likely to dilute LS&CO.'s Arcuate
26 and/or Tab Trademark.

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28 ///

1 c. Whether and to what extent LS&CO. has been damaged by Jeans City's
2 manufacture, distribution, and/or sale of products bearing the stitching and/or tab designs at
3 issue.

4 d. Whether the Arcuate and/or Tab Trademarks are famous.

5 e. The amount of profits earned by Jeans City on products bearing the
6 stitching and/or tab designs at issue.

7 f. Whether LS&CO. failed to give Jeans City notice of infringement and an
8 opportunity to take corrective measures before LS&CO. filed its Complaint.

9 g. Whether LS&CO. has adequately protected/policed its Arcuate and/or
10 Tab Trademarks.

13 i. Whether and to what extent pocket stitching designs and tabs similar to
14 LS&CO.'s trademarks are in common use by third parties unrelated to Jeans City.

15 j. Whether LS&CO. has abandoned or acquiesced in enforcing its Arcuate
16 and/or Tab Trademarks.

17 k. Whether LS&CO. has allowed its Arcuate and/or Tab Trademarks to be
18 used to misrepresent the source of its goods or in the connection with which the marks are used.

1. Whether LS&CO failed to mitigate any alleged injury or damages.

20 | Legal Issues:

21 a. Whether Jeans City's manufacture, distribution, and/or sale of products
22 bearing the stitching and/or tab designs at issue constitutes infringement and dilution of
23 LS&CO.'s Arcuate Trademark and/or Tab Trademark and unfair competition under the federal
24 Lanham Act, 15 U.S.C. § 1051 *et seq.*

1 Prof. Code § 14330.

2 c. Whether LS&CO. is entitled to recovery of Jeans City's profits or a
 3 reasonable royalty on account of the infringement under the federal Lanham Act, 15 U.S.C. §
 4 1117 (a) and/or common law.

5 d. Whether LS&CO.'s Arcuate Trademark and/or Tab Trademark are
 6 enforceable.

7 e. Whether LS&CO.'s Arcuate Trademark and/or Tab Trademark should be
 8 cancelled.

9 f. Whether LS&CO.'s prior conduct precludes its causes of action.

10 g. Whether LS&CO has misused its Arcuate Trademark and/or Tab
 11 Trademarks.

12 h. Whether LS&CO's Arcuate Trademark and/or Tab Trademarks have
 13 become generic.

14 i. If damaged, whether LS&CO. is entitled to a royalty measure of
 15 damages.

16 **4. Motions.**

17 The parties anticipate that they may file dispositive motions, depending on the evidence
 18 that is produced during the discovery process.

19 **5. Amendment of Pleadings.**

20 The parties have agreed to a deadline of October 16, 2008 to amend pleadings.

21 **6. Evidence Preservation.**

22 LS&CO. has taken steps, including the suspension of normal document destruction
 23 programs and placement of a litigation hold for documents, including electronically stored
 24 documents, to preserve evidence relevant to the issues reasonably evident in this action,
 25 including interdiction of any document destruction program and any ongoing erasure of emails,
 26 voice mails and other electronically recorded materials.

27 Jeans City has taken similar preservation measures, including litigation hold notices for
 28 all documents, electronic or otherwise, that may be relevant to this action.

1 **7. Disclosures.**

2 The parties have timely complied with the initial disclosure requirements of
3 Fed. R. Civ. P. 26.

4 **8. Discovery.**

5 The parties expect to agree upon a stipulation regarding the entry of a protective order
6 governing documents and information to be disclosed in the course of this litigation.
7 Thereafter, the parties anticipate exchanging document requests and other written discovery and
8 cooperating in arranging depositions of pertinent party and non-party witnesses. The parties do
9 not propose any other changes with regard to the timing, form, or requirement for disclosures
10 under Fed. R. Civ. P. Rule 26(a). The parties have not agreed to any limitations on the subject
11 matter of discovery, and are to complete discovery within the time limits to be set by the court.
12 Should the need arise at a later date to amend these deadlines, they may be modified by
13 stipulation and order or motion supported by good cause.

14 **9. Class Actions.**

15 This is not a class action.

16 **10. Related Cases.**

17 There are no related cases pending in this Court. Jeans City believes that LS&CO.'s
18 prior and pending Complaints against third parties relating to the Arcuate Trademark and/or Tab
19 Trademarks are relevant to its claims and defenses.

20 **11. Relief.**

21 Pursuant to 15 U.S.C. § 1117(a), LS&CO. will seek damages in the amount of Jeans
22 City's profits from the sale of infringing goods or, alternatively a reasonable royalty. Given that
23 discovery with respect to damages has not yet begun, LS&CO. is unable to compute damages at
24 this time. LS&CO. may seek recovery of additional statutory penalties and punitive damages,
25 and recovery of its attorneys' fees in the event that Jeans City's conduct was willful. LS&CO.'s
26 complaint also seeks injunctive relief. Jeans City will seek recovery of all its costs and fees
27 incurred in defense of this action.

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12. Settlement and ADR.

2 The parties request referral to mediation as their ADR process.

13. Consent to Magistrate Judge For All Purposes.

4 The parties do not believe the case is suitable for a magistrate judge and have elected to
5 have the case heard by a trial judge.

14. Other References.

7 The parties do not believe the case is suitable for reference to binding arbitration, a
8 special master, or to the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues.

10 The parties do not believe that the issues in dispute can be narrowed.

16. Expedited Schedule.

12 The parties do not believe that this type of case can be handled on an expedited basis
13 with streamlined procedures.

17. Scheduling.

15 The parties propose the following discovery and court dates:

16	Fact Discovery Cutoff:	January 30, 2009
17	Expert Disclosures:	February 29, 2009
18	Rebuttal Expert Disclosures:	March 20, 2009
19	Expert Discovery Cut-off:	April 13, 2009
20	Last Date for Filing of Dispositive Motions:	May 20, 2009 (to be heard June 18, 2009)
21	Final Pretrial Conference Date:	August 3, 2009
22	Trial Date:	August 17, 2009

18. Trial.

25 The parties expect that the trial will last three to five court days. LS&CO. has demanded
26 a jury. The parties do not believe bifurcation is a viable alternative in this case.

19. Disclosure of Non-party Interested Entities or Persons.

28 LS&CO. has filed the "Certification of Interested Entities or Persons" required by Civil

1 Local Rule 3-16 certifying that other than the named parties there are no other interested entities
2 or persons. Jeans City certifies that other than the named parties there are no other interested
3 entities or parties.

4 **20. Other Items.**

5 None.

6
7 DATED: July 17, 2008

Respectfully submitted,

8
9 By: /s/ Raquel Pacheco
10 Raquel Pacheco
11 TOWNSEND AND TOWNSEND AND CREW
12 LLP

13
14 Attorneys for Plaintiff
15 DATED: July 17, 2008
16 By: /s/ Rachel R. Davison
17 Rachel R. Davison
18 K&L GATES

19
20 Attorneys for Defendant
21 JEANS CITY USA, INC.

GENERAL ORDER ATTESTATION

2 Pursuant to General Order No. 45, Section X(B) regarding signatures, I, Raquel Pacheco
3 attest that concurrence in the filing of this document has been obtained from Rachel R. Davison.
4 I declare under penalty of perjury under the laws of the United States of America that the
5 foregoing is true and correct. Executed this 17th day of July, 2008. at San Francisco,
6 California.

/s/ Raquel Pacheco
Raquel Pacheco

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ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

Dated: _____, 2008

THE HONORABLE WILLIAM ALSUP
United States District Court Judge